

ORIGINAL



0000093706

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY, IN
CONFORMANCE WITH THE
REQUIREMENT OF ARIZONA REVISED
STATUTES §§ 40-360, *et seq.*, FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE
TS-5 TO TS-9 500/230kV
TRANSMISSION LINE PROJECT,
WHICH ORIGINATES AT THE FUTURE
TS-5 SUBSTATION, LOCATED IN THE
WEST HALF OF SECTION 29,
TOWNSHIP 4 NORTH, RANGE 4 WEST
AND TERMINATES AT THE FUTURE
TS-9 SUBSTATION, LOCATED IN
SECTION 33, TOWNSHIP 6 NORTH,
RANGE 1 EAST, IN MARICIPA
COUNTY, ARIZONA

DOCKET NO.
L-00000D-08-0330-00138

CASE NO. 138

**DLGC AND LAKE PLEASANT
GROUP'S BRIEF**

Arizona Corporation Commission

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Pursuant to the Procedural Order docketed January 23, 2008, Intervenor DLGC II, LLC and Lake Pleasant Group, LLP (collectively, "DLGC") hereby file their brief for use by the Arizona Corporation Commission ("Commission") in its review of the December 28, 2008 Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee's ("Committee"). DLGC requests that the Commission amend the CEC to adopt a condition to minimize visual impacts on visitors to Lake Pleasant Regional Park and from DLGC's property. DLGC also supports Arizona Public Service Company's ("APS") proposal to contingently adopt an alternative corridor for use in the event BLM does not approve siting on federal lands along State Route 74.

1 **BACKGROUND**

2 In its application, APS had proposed as Alternative 3 a route that would run along
3 SR 74 between the 179th Avenue alignment and the 99th Avenue alignment. APS's
4 proposed corridor along Alternative 3 was 3,500 feet wide, including 2,000 feet north of
5 the centerline of SR 74, and 1,500 feet south of the centerline of SR 74.¹

6 DLGC is developing residential property immediately north of SR 74, at
7 approximately the 107th Avenue alignment. As reflected in the map that is included at
8 Attachment A, Lake Pleasant Regional Park is adjacent to DLGC's property, on the north
9 and east sides of DLGC's property.² The Park's southern boundary abuts SR 74.
10 Because APS's Alternative 3 corridor encroached on DLGC's property, DLGC
11 intervened in the proceeding.

12 During the course of the hearing, several parties proposed what became known as
13 the "Alternative 3 North" alignment, a variation on APS's proposed Alternative 3 that
14 was largely, but not completely, north of SR 74, and was completely within the corridor
15 noticed by APS as Alternative 3. In the area of DLGC's property, the Alternative 3 North
16 consisted of a route that was on the south side of SR 74 (thus avoiding encroaching on
17 DLGC's property and the Park), in a 1,000 foot wide corridor that began 500 feet south of
18 SR 74. Thus, at the vicinity of DLGC's property and the Park, the Alternative 3 North
19 corridor included a 500' buffer to the south of SR 74, and extended as far south in the
20 APS noticed corridor as possible.³

21 At the hearing, DLGC offered testimony and visual simulations of the line when
22 placed at points 500 feet, 1,500 feet and 2,000 feet south of SR 74.⁴ The simulations
23

24

¹ Hearing Exhibit A-1 (APS's Application) at 7.

25 ² Attachment A hereto is Page 8 from Hearing Exhibit G-3.

26 ³ Hearing Transcript Vol. X at pgs. 2317, 2390-91.

⁴ Hearing Transcript Vol. XVIII at pgs. 2900-01; Hearing Exhibit G-3 at pgs. 13 & 15 (500 feet south), 17
 (1,500 feet south) and 18 (2,000 feet south).

1 (included as Attachment B) demonstrated that, by moving an additional 500 feet south,
2 from a point 1,500 feet south to a point 2,000 feet south of SR 74, significant screening
3 can be accomplished due to the terrain in the area. This additional 500 feet is outside of
4 the corridor originally noticed by APS as part of Alternative 3 and completely on state
5 trust land. Chairman Foreman ruled that, based on the facts, this additional footage was
6 not a substantial change from the noticed route, and thus the Committee could consider a
7 corridor that included the additional 500 feet.⁵ DLGC, which had originally opposed the
8 Alternative 3 route, supported the Alternative 3 North route with the additional 500 feet
9 to the south, and supported a condition that would have required APS to attempt to site
10 the line in the additional 500 feet to take advantage of the additional screening
11 opportunities.⁶

12 The CEC adopted by the Committee largely adopted the Alternative 3 North
13 proposal, and adopted the additional 500 feet south between the 115th Avenue alignment
14 and the 99th Avenue alignment.⁷ The CEC did not include a condition to require APS to
15 take advantage of the screening opportunities by using the southern-most 500 feet
16 between the 115th Avenue and 99th Avenue alignments.

17 Several parties, including DLGC, filed requests for the Commission to review the
18 CEC approved by the Committee, pursuant to A.R.S. § 460-367.07. DLGC's request for
19 review requested that the Commission amend the CEC to require APS to take advantage
20 of screening opportunities when siting the line within the 1,500 foot wide corridor in the
21 area of DLGC's property and Lake Pleasant Regional Park. APS's request for review

22
23 ⁵ Hearing Transcript Vol. VX, at pgs. 3173-74.

24 ⁶ Hearing Transcript Vol. XV at pg. 3338. *See also* Form of CEC filed November 26, 2008, at pg. 12, line
25 25 – pg. 13, line 8. DLGC's proposed condition was drafted as a modification to language that was proposed by
26 Intervenor Diamond Ventures, that would have required APS to request in any BLM or ASLD applications the
particular route proposed by Diamond Venture's witness at the hearing. DLGC's additional proposed language
would have allowed APS to apply to BLM or ALSD for a route further south in the area east of the 115th Avenue
alignment.

⁷ CEC at pg. 6 line 24-pg. 7 line 2.

1 requested, among other things, that the Commission approve an automatic contingency in
2 the event that the Bureau of Land Management ("BLM") does not approve use of its
3 lands in the route adopted by the CEC. As part of that contingently approved route, APS
4 proposed elimination of the 500 foot "buffer" along SR 74 east of the 115th Ave.
5 alignment.

6
7 **THE COMMISSION SHOULD AMEND THE CEC TO REQUIRE APS TO TAKE**
8 **ADVANTAGE OF SCREENING OPPORTUNITIES IN THE AREA OF LAKE**
9 **PLEASANT REGIONAL PARK**

10
11 On the second day of the hearing, Maricopa County Parks and Recreation
12 ("Department") Director R.J. Cardin provided public comment to the Committee
13 indicating the Department's objection to APS's proposed Alternative 3 alignment, in part
14 because of the visual impact to the Park's 700,000 annual visitors.⁸ While the Committee
15 did ultimately adopt a route that is in the vicinity of the Park (but not actually encroaching
16 on Park property, as APS's Alternative 3 had), it did not adopt a simple condition that
17 could have more fully alleviated the Department's concern. A condition to require APS to
18 attempt to utilize a transmission route in the southernmost 500 feet of the corridor from
19 the 115th Avenue alignment to the 99th Avenue alignment would allow APS to maximize
20 the screening benefits due to the additional 500 feet of corridor width. The Department
21 supports the Commission adopting such a condition.⁹

22 DLGC's visual simulation demonstrates that by constructing the transmission line
23 in the southernmost 500 feet of the corridor in the vicinity of the Park, APS could take
24 advantage of significant additional screening opportunities, almost completely shielding
25

26 ⁸ Hearing Transcript Vol. II at pgs. 269-71.

⁹ Letter from R.J. Cardin, docketed January 26, 2009 (appended hereto as Attachment C)

1 the view of the line from DLGC's property and the Park.¹⁰ To address land use and visual
2 impacts along other portions of the route, the Committee approved narrower corridors
3 than APS had originally proposed, even when such narrower corridors increased impacts
4 on public lands.¹¹ Thus, the Committee expressed its general preference for minimizing
5 impacts by approving narrower corridors.

6 In reviewing a CEC, the Commission "shall comply with the provisions of § 40-
7 360.06 and shall balance, in the broad public interest, the need for an adequate,
8 economical and reliable supply of electric power with the desire to minimize the effect
9 thereof on the environment and ecology of this state." A.R.S. § 40-360.07(B). Nothing
10 in this statute requires Commission to grant any deference to the Committee's
11 determinations regarding how environmental impacts ought to be addressed by a project.
12 Rather, the Commission is free to undertake its own weighting of the environmental
13 impacts of a project, and impose its own conditions to alleviate such impacts.

14 The Committee did not indicate why it declined to adopt the condition that would
15 require APS to attempt to take advantage of screening opportunities presented by the
16 additional 500 feet. However, the Commission is empowered to adopt the condition, and
17 should do so because it more appropriately balances the impacts presented by the
18 transmission line. Attachment D is the amendment that DLGC proposes the Commission
19 adopt to require APS to take advantage of the additional screening opportunities in the
20 southernmost portion of the corridor between the 115th Avenue alignment and the 99th
21 Avenue alignment.

23 ¹⁰ Hearing Exhibit G-3 at pgs. 17-18 (included in Attachment B hereto).

24 ¹¹ In its rebuttal testimony, APS narrowed corridor widths in a number of portions of its proposed routes, in
25 response to concerns expressed at the hearing by parties and Committee members. Additionally, the Committee
26 adopted a corridor narrower than APS's rebuttal proposal along the 275th Avenue alignment, between the Mead-
Phoenix transmission line and the Lone Mountain Road alignment (adopted 1,000 foot wide corridor, as opposed to
APS's rebuttal proposal of 2,000 feet). See CEC at pg. 4, lines 21-24; Form of CEC filed November 26, 2008, at pg.
4, line 25 – pg. 5, line 4.

1 DLGC SUPPORTS THE CONCEPT OF CONTINGENT APPROVAL OF AN
2 ALTERNATIVE ROUTE TO ADDRESS THE RISK OF BLM DENIAL, BUT
3 ELIMINATION OF THE BUFFER EAST OF THE 115TH AVE. ALIGNMENT IS
4 NOT NECESSARY TO ADDRESS THE CONTINGENCY
5

6 APS suggests that the Commission include a "contingency" to address the
7 possibility that the BLM would not approve the use of federal lands along SR 74 in the
8 route of the Commission-approved CEC. Specifically, APS proposes that the
9 Commission approve APS's originally-proposed 3,500'-wide corridor along SR 74 and
10 west of the 115th Ave. alignment, and the Commission also include a condition that
11 requires APS to attempt to get BLM and ASLD approval for the narrower Alternative 3
12 North corridor. If APS is not able to obtain BLM and ASLD approvals, APS would be
13 free to use the wider corridor.¹²

14 DLGC supports the Commission approving at this time a wider, or altogether
15 separate¹³ corridor in which APS can site the line in the event BLM refuses to approve the
16 use of the federal lands along SR 74. DLGC has invested significant resources to protect
17 its interests by participating in the 17 days of hearing before the Committee, and the
18 subsequent process before this Commission. If BLM did not approve the use of federal
19 lands in the Commission-approved CEC, APS would be required to return to the
20 Committee/Commission with a new or amended application to site this transmission line,
21 and DLGC (and the other parties) would have to invest additional resources to protect
22 their interests in the further proceedings. DLGC agrees with APS that such a "replay of
23 Line Siting Case 111" should be avoided.¹⁴ DLGC therefore supports the concept of the
24

25 ¹² See APS Request for Review at pg. 12.

26 ¹³ In addition to a wider corridor along SR 74, APS proposes as an alternative that the Commission could
approve Segments 4 and 5 of the Preferred Route. APS Request for Review at 10.

¹⁴ APS Request for Review at 10. In Line Siting Case No. 111, the Forest Service has refused to approve a

1 Commission granting approval of a contingent route that APS can utilize (without any
2 further action from the Commission) if BLM refuses to authorize use of the federal lands
3 along SR 74.

4 In the details of its "contingency" proposal, however, APS paints with too broad a
5 brush by including the area east of the 115th Ave. alignment.¹⁵ Specifically, APS includes
6 in its request for contingent siting authority the 500' buffer south of SR 74 and east of the
7 115th Ave. alignment. APS's concern about BLM's denying use of federal lands is rooted
8 in the National Environmental Policy Act's ("NEPA") requirement that BLM consider
9 alternatives to the Alternative 3 North corridor when determining whether to grant APS
10 approval to use federal lands.¹⁶ However, there are no federal lands in the area east of
11 the 115th Ave. alignment and south of SR 74,¹⁷ and thus the NEPA requirement does not
12 apply. Though ASLD does manage the state trust lands in this area, and ASLD must also
13 authorize APS's use of the state trust land, the record does not indicate that ASLD has
14 any NEPA-like requirement to examine alternative routes that might be available.
15 Further, in its own request for review, ASLD has not objected to the 500' buffer east of
16 the 115th Ave. alignment, and ASLD is the only landowner whose land is directly
17 impacted by the buffer. ASLD is in a better position to assert its own interests in this
18 proceeding than is APS. Because ASLD is not subject to the NEPA requirement, and has
19 not itself sought review of the 500' buffer on its lands, the Commission should not
20 contingently approve a siting within that buffer.

21
22
23
24 transmission line route approved by the Commission, and the matter remains at a stalemate (and the line remains
unconstructed) 9 years later. See Hearing Transcript Vol. X at pgs. 2372-73.

25 ¹⁵ APS Request for Review at pg. 12, lines 12-15 and the reference to "ASLD" on line 21.

26 ¹⁶ APS Request for Review at pgs.7-8.

¹⁷ Hearing Exhibit A-1 (APS's Application), at Exhibit A-2 (Surface Management map). This same map is
part of the "placemat" APS provided for convenience of the Committee and parties.

1 The 500' buffer was an integral part of the Alternative 3 North proposal.¹⁸ The
2 buffer has the effect of mitigating visual impacts along SR. The Alternative 3 North
3 proposal was created in an effort to address the conflicting interest of a number of
4 different parties.¹⁹ Mitigation of the visual impact from SR 74 was a crucial issue to a
5 number of parties whose land is located along SR 74.²⁰ Further, a number of public
6 commenters expressed concerns about visual impacts along SR 74.²¹

7 The Commission should grant contingent approval of a route that does not impact
8 the BLM lands along SR 74 so that the Commission, the Committee and the parties would
9 not need to invest further resources if BLM does not permit the line on its lands.
10 However, any contingently-approved route should not include the 500' buffer east of the
11 115th Ave. alignment, as that is not federally-managed land.

12 13 **CONCLUSION**

14
15 DLGC requests that the Commission modify the CEC approved by the Committee
16 to require APS to take advantage of the additional screening opportunities available in the
17 southernmost portion of the approved corridor between the 115th Avenue alignment and
18 the 99th Avenue alignment, to minimize visual impacts on visitors to the Lake Pleasant
19 Regional Park, drivers on scenic SR 74, and future residents on DLGC's property. The
20 Commission should adopt the proposed amendment included as Attachment D hereto.
21 Further, the Commission should contingently approve an alternative corridor, either a
22

23 ¹⁸ Hearing Transcript Vol. X at pg. 2297; Vol. XIII at pg. 2693.

24 ¹⁹ Hearing Transcript Vol. X at pg. 2297.

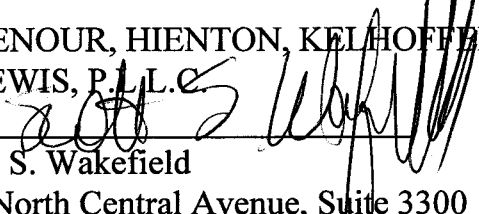
25 ²⁰ Hearing Transcript Vol. XIII at pgs. 2693, 2826-27, 2841-42, 2895-97.

26 ²¹ Maricopa County Parks & Recreation Department (Hearing Transcript Vol. II at pgs. 269-271 and letter docketed January 26, 2009); Sierra Club (Hearing Exhibit A-1 (APS Application), at Exhibit B-2, "Other Correspondence" tab); North Country Conservancy (Hearing Exhibit A-1 (APS Application), at Exhibit B-2, "Other Correspondence" tab).

1 wider corridor along SR 74, or Segments 4 and 5 of the Preferred Route, so that
2 additional proceedings are not necessary if BLM refuses to approve the primary corridor
3 approved in the CEC. Finally, the Commission should retain the 500' buffer along the
4 south side of SR 74 east of the 115th Ave. alignment.

5 Dated this 12 day of February, 2009.

6 RIDENOUR, HIENTON, KELHOFFER
7 & LEWIS, P.A.L.L.C.

8 By: 
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16 this 12 day of February, 2009, with:
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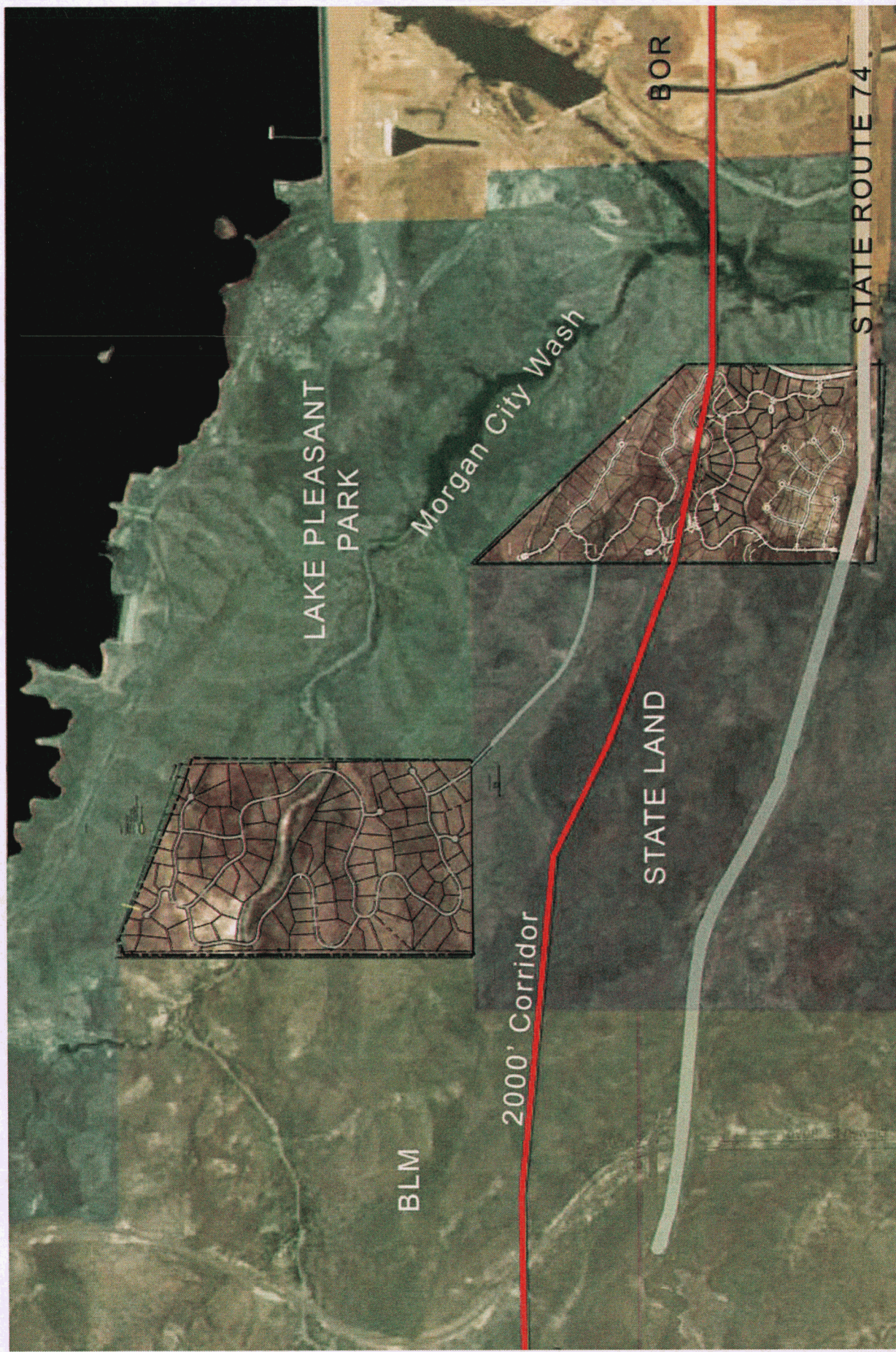
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26

ATTACHMENT
A



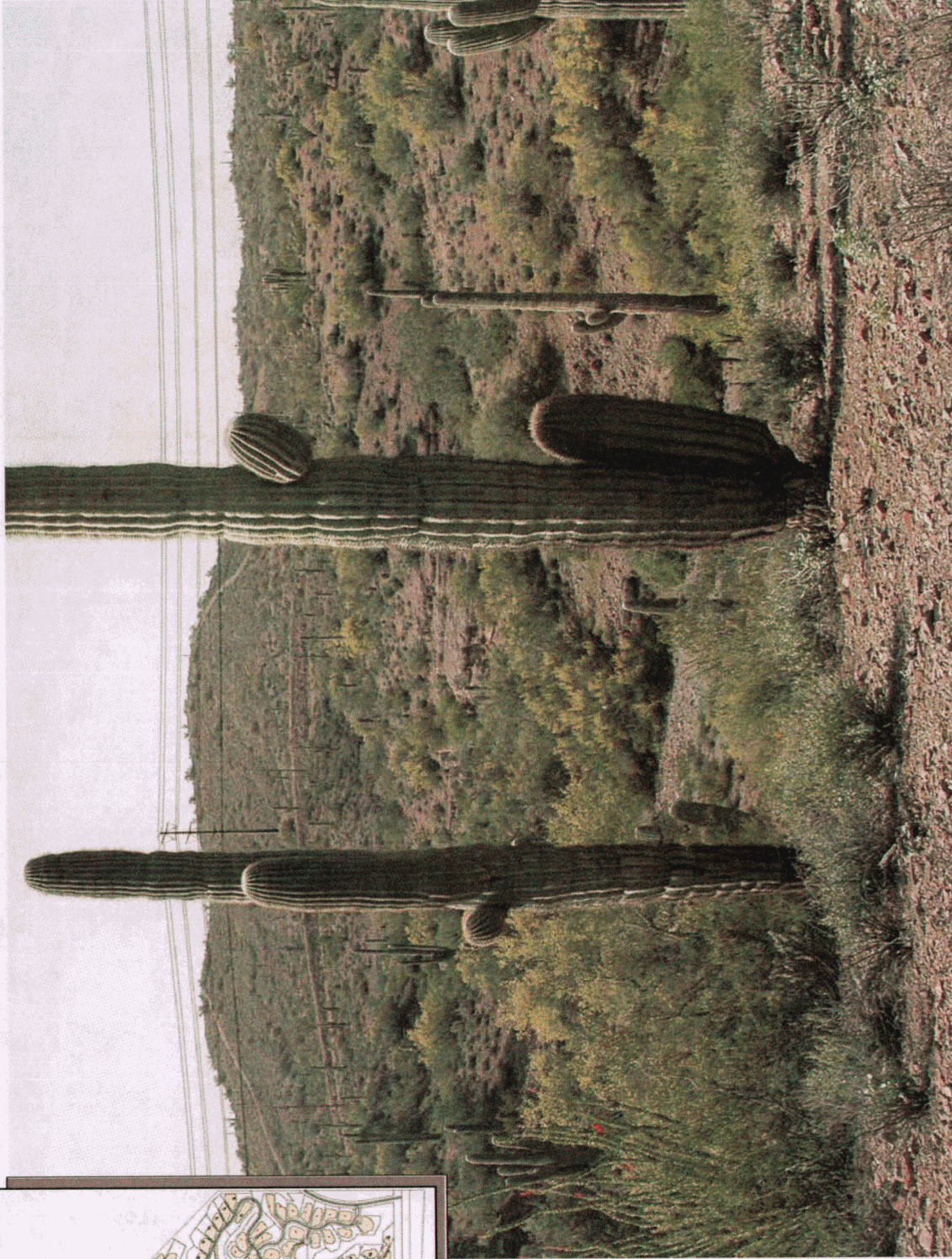
Estates at Lakeside

**ATTACHMENT
B**



Estates at Lakeside

SITE VIEW FROM LOT 3 LOOKING SOUTH - APS
PROPOSED LINES IN 500' CORRIDOR ON S. SIDE OF SR74 ¹³

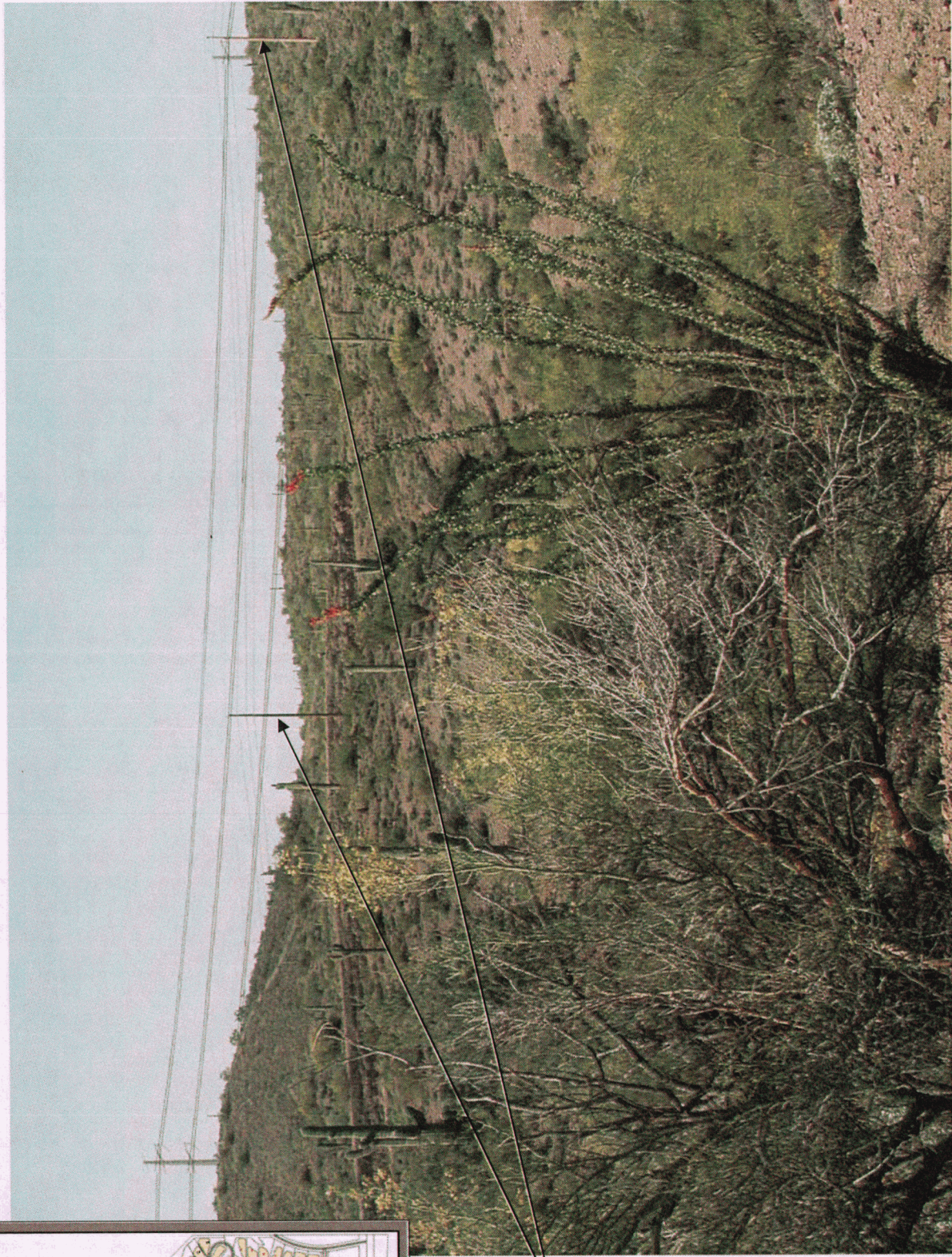


Estates at Lakeside

SITE VIEW FROM LOT 25 LOOKING SOUTHWEST-APS
PROPOSED LINES IN 500' CORRIDOR ON S. SIDE OF SR74 15

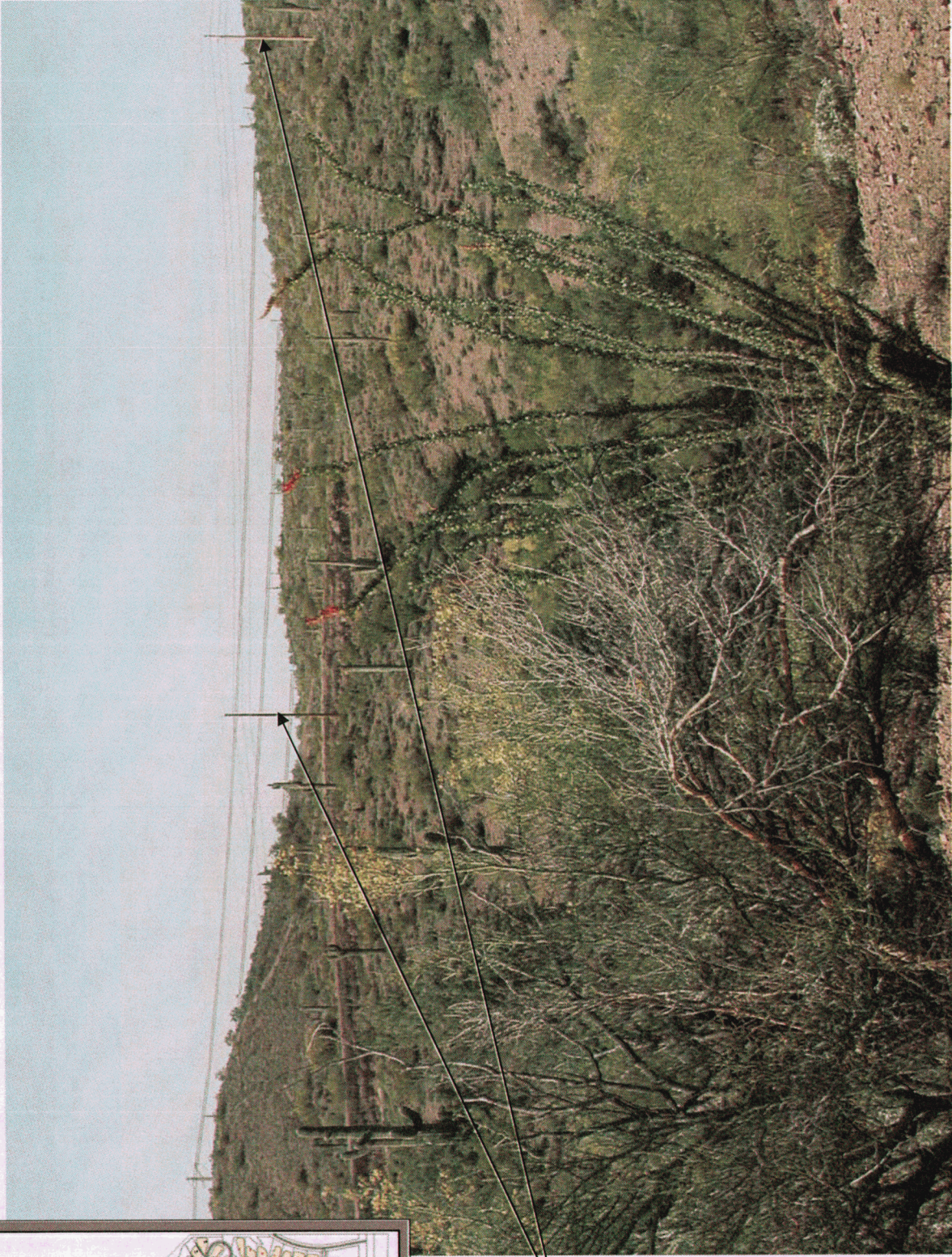


Existing
69kV Poles



Estates at Lakeside

SITE VIEW FROM LOT 3 LOOKING SOUTH-
LINE LOCATION 1500' SOUTH OF SR74 17



Existing
69kV Poles

Estates at Lakeside

SITE VIEW FROM LOT 3 LOOKING SOUTH-
LINE LOCATION 2000' SOUTH OF SR74 18

**ATTACHMENT
C**



Maricopa County
Parks and Recreation Department

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January 21, 2009

Hon. Kristin K. Mayes, Chairman
Hon. Gary Pierce, Commissioner
Hon. Sandra D. Kennedy, Commissioner
Hon. Bob Stump, Commissioner
Hon. Paul Newman, Commissioner
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

JAN 26 2009

DOCKETED BY

RE: APS Line Siting, Docket No. L00000D-08-0330-00138, Case No. 138

Dear Commissioners:

The Maricopa County Parks and Recreation Department manages the Lake Pleasant Regional Park. Recently, the Arizona Power Plant and Transmission Line Siting Committee issued a Certificate of Environmental Compatibility for a transmission line adjacent to the southern boundary of the Park, along SR 74. The Department is concerned that placement of the line within the view shed of the Park creates visual blight on the Park and diminishes the visitor experience for its nearly 700,000 visitors annually. The Department therefore requests the Commission dictate that APS will site the line in the southernmost portion of the corridor near the Park. Further, the Department opposes the request of APS to approve a corridor that is closer to SR 74 in the vicinity of the Park.

In its application, APS proposed a corridor along SR 74 that extended 2,000 feet north and 1,500 feet south of SR 74. The Committee approved a much narrower corridor, beginning 500 feet south of SR 74. We understand that, in recognition that nearby hills can shield the view of the line significantly, the Committee's approved corridor extends 500 feet further south from SR 74 than APS had originally proposed, to a point 2,000 feet south of the highway. However, the Committee rejected a condition that would have required APS to make use of those shielding opportunities when it sought a right-of-way from the Arizona State Land Department for the portion of the line near the Park.

The Department is concerned that, in light of the Arizona State Land Department's (ASLD) expressed preference to grant rights of way for such infrastructure in close proximity to the existing SR 74 right of way, ASLD is likely to deny a right of way for the more shielded line in the southernmost 500 feet of the corridor.

January 21, 2009

RE: APS Line Siting, Docket No. L00000D-08-0330-00138, Case No. 138

Page 2 of 2

APS requests that the Commission modify the corridor along SR 74 between 115th Avenue and 99th Avenue to extend the corridor further north, and closer to the Park's boundary. The Department opposes this modification, as it could result in the line being even more visible from the Park. We note, however, that APS has suggested that, in order to address the possibility that the managers of public lands might not approve siting of the line in the Committee's approved corridors, the Commission could approve Segments 4 and 5, APS's preferred routing of the line from the outset. The Department would find this to be an acceptable routing to alleviate its concerns, and urges the Commission to consider it.

Sincerely,

A handwritten signature in black ink, appearing to read "R.J. Cardin". The signature is fluid and cursive, with a large, sweeping "C" at the end.

R.J. Cardin
Director

RJC/knt

cc: Central Files
Chrono File

**ATTACHMENT
D**

DLGC'S PROPOSED AMENDMENT

(to require APS to take advantage of additional screening opportunities between the 115th Avenue and 99th Avenue alignments)

Page 7, Line 17 of Certificate of Environmental Compatibility

INSERT the following after "Certificate":

In such right-of-way application to cross ASLD lands for that portion of the Project between the 115th Avenue alignment and the 99th Avenue alignment, the Applicant shall specify a transmission route in the southern-most 500 feet of the corridor approved in this Certificate.